IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4024 OF 2003

Shri.Rameshkumar Madanlal Kalantri ..Applicant

Vs.

Shri.Suresh Narayan Vaishya
& Anr. ..Respondents

...

Mr.M.S.Karnik Advocate for Applicant
Mr.D.P.Adsule, A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.4025 OF 2003

Shri.Rameshkumar Madanlal Kalantri ..Applicant

Vs.

Ashoksing Uttamsing Yevtikar
& Anr. ..Respondents

...

Mr.M.S.Karnik Advocate for Applicant
Mr.Mule i/b Mr.G.S.Godbole for Respondent no.1
Mr.Y.S.Shinde, A.P.P. for the State

...

WITH

CRIMINAL APPLICATION NO.4026 OF 2003

Shri.Rameshkumar Madanlal Kalantri ..Applicant

Vs.

Shri.Suresh Narayan Vaishya
& Anr. ..Respondents

...
Mr.M.S.Karnik Advocate for Applicant
Mr.D.P.Adsule, A.P.P. for the State
...

WITH
CRIMINAL APPLICATION NO.4027 OF 2003

Shri.Rameshkumar Madanlal Kalantri ..Applicant

Vs.

Shri.Suresh Narayan Vaishya
& Anr. ..Respondents

...
Mr.M.S.Karnik Advocate for Applicant
Mr.M.S.Mhambaray, A.P.P. for the State
...

WITH
CRIMINAL APPLICATION NO.4028 OF 2003

Shri.Rameshkumar Madanlal Kalantri ..Applicant

Vs.

Shri.Suresh Narayan Vaishya
& Anr. ..Respondents

...
Mr.M.S.Karnik Advocate for Applicant
...

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : JULY 18,2005

P.C.

1. Heard the learned advocate for the applicant, the learned A.P.P. for the State and the learned

advocate for the respondent no.1 in Cri.Application No. 4025 of 2003 and perused the reply.

2. The accused Rameshkumar Madanlal Kalantri is facing prosecution in Summary Criminal Case Nos. 476 of 1995, 1026 of 1995, 507 of 1995, 478 of 1995 and 434 of 1995. The cases are under Section 138 of N.I.Act. All the said cases are pending before the learned Xth J.M.F.C. Nasik.

3. It is the case of the accused-Rameshkumar that he is mentally unsound and hence, the trial pertaining to these cases may be kept in abeyance. The father of accused-Rameshkumar preferred applications in respect of this prayer before the learned Magistrate which came to be rejected. Being aggrieved thereby, revisions came to be preferred. The said revisions came to be dismissed by the learned Sessions Judge.

4. It is the specific case of the accused-Rameshkumar that he is of unsound mind and therefore, he cannot defend the said cases. Hence, the applications were preferred by his father to

keep the cases in abeyance. By order dated 28.11.1996, the learned Magistrate had directed accused-Rameshkumar to submit himself for medical examination. The accused came to be medically examined and the Civil Surgeon opined in his certificate dated 27.1.1997 that the accused Rameshkumar is suffering from 'Psychiatric Disorder-Mentally Abnormal'.

5. The learned Magistrate rejected the plea of Rameshkumar that he is of unsound mind and therefore, he cannot defend the case by order dated 14.12.2002. The Magistrate observed that the certificate is of the year 1997 and there was nothing reliable to show the present condition of the accused, hence, the application came to be rejected. As stated above, the revisions preferred against the order of the learned Magistrate also came to be dismissed. The earlier certificate on which reliance was placed, was dated 27.1.1997. Thereafter, reliance was placed on a certificate dated 10.4.2001 to support the contention that the accused-Rameshkumar was mentally unsound. However, the said certificate was not issued by the Civil

Surgeon. Moreover, in the said certificate, the exact present position of the accused was not brought on record. In none of the certificates, the Doctor has given clear finding that the accused was so mentally ill that he was incapable of defending himself. The exact nature of abnormality was also not stated.

6. The facts pertaining to the present case are that the accused Rameshkumar runs a grocery shop by name Balaji Distributor at Gurudeo Co.Op. Housing Society B.B.R.C. Road and in respect of the business relating to the said grocery shop, various cheques had been issued to various parties. These cheques were dishonoured and hence, complaints came to be filed against him. The learned Magistrate in his order has stated that he had made enquiries about the life of the accused and the business that he is carrying on and during the enquiry, he came to the conclusion that accused is a prudent man and is capable of defending himself. It is seen that the accused is socially active person. He is a member of Lions Club of Deolali Nasik Road Branch. In fact, it is not disputed that the news item had

appeared in the newspaper ‘Gavkari’ dated 7thJuly, 1996. In the said news item, it is mentioned that the accused and others inaugurated the meeting relating to the Lion’s Club Deolali Nasik Road Branch by lighting sacred lamp. The letterhead of Lion’s Club Nasik discloses that the accused is the Head of the Membership Committee of the Club. This letterhead is not disputed. As stated earlier, the accused is running a shop. Thus, it is seen that he is carrying on business activity of running a shop. Moreover, accused is one of the parties in Special Suit No.182 of 1995. In the said suit, the accused has filed reply to defend the claim of interim relief against him. The accused has filed Written Statement in RCS No.128 of 1995. He has signed the same and attested it on 17.6.1997. All these documents disclose that the accused is following all the normal pursuits of a prudent, rationale and responsible person. In such case, I find no error in the order of the Magistrate rejecting the application of the accused for stay and directing the accused to defend himself. So also I find no error in the order of the learned Sessions Judge dismissing the revisions.

7. Applications are rejected.

[V.K.TAHILRAMANI,J.]